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Subject: local/state CERCLA liability
Attachments: [local-gov-liab-acq-fs-rev.pdf](#)

Hi Scott-

I've looked into the question you raised this morning a bit and realized that during our conversation I did not recall the March 2018 amendments to CERCLA. The amendments change the exclusion from the definition of "owner or operator" for purposes of liability. I had mentioned that an exclusion exists for state/local governments who acquire contaminated property involuntarily. The word "involuntary" has now been removed, and replaced with the likely more broad definition:

The term "owner or operator" does not include a unit of State or local government which acquired ownership or control through seizure *or otherwise in connection with law enforcement activity*, or through bankruptcy, tax delinquency, abandonment, or other circumstances in which the government acquires title by virtue of its function as sovereign. See Section 101(20)(D) of CERCLA, BUILD Act Amendment (emphasis added for likely more broad terms).

This change is very recent and EPA has not yet updated its guidance documents to reflect that change in exemption definition. That being said, the attached document does address liability matters for local and state governments under many aspects of CERCLA. I think it could be useful, keeping in mind that the exemption under Section 101(20)(D) is now likely more broad than it was when this guidance was written.

Hope this helps.

Kris

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